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TABLE OF CONTENTS

	Page
FORWARD	1
INTRODUCTION	3
OBJECTIVES AND PROPOSALS	5
CONTENTS OF DISCUSSION DRAFT	8
DRAFT REPAIR AND STORAGE LIEN ACT WITH CLAUSE-BY-CLAUSE EXPLANATION AND COMMENTARY	10
Appendix "A" LEGISLATION THAT WOULD BE REPLACED	59
Appendix "B" LEGISLATION THAT WOULD BE AMENDED	65

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DISCUSSION PAPER ON

REPAIR AND STORAGE LIENS

FOREWORD

Persons who make repairs to, or who are in the business of storing articles such as motor vehicles, furniture and jewellery have long had the right to retain the article in their possession until they are paid for their services. This right is called a possessory lien. In addition to the right to retain possession, three different statutes confer rights to sell an article to recover the value of these services. While these lien rights and the right to sell are well accepted, there are many procedural aspects related to them that now appear in need of revision.

In particular, in 1976, the Ontario Law Reform Commission proposed the creation of a non-possessory lien for vehicle repairs. The concept is designed to deal with situations where a repair has been made to a vehicle, for example, a truck or automobile, and the customer cannot immediately pay for the repair but wants possession, and the repairer does not want to retain possession of the vehicle while waiting for payment but wants security for the repair. Implementation of this proposal has been delayed because it was not feasible to deal with the proposal under the existing Personal Property Security Act.

A new Personal Property Security Act, based on the Report of the Advisory Committee to the Minister of Consumer and Commercial Relations (1984), has been proposed and the Law Reform Commission proposal could be integrated into a revised personal property security registration system. Part II of the Discussion Draft of the Repair and Storage Lien Act in this paper, if enacted, would establish a system of non-possessory liens for the repair and storage of vehicles.

The Draft Act contained in this discussion paper also provides increased customer protection. At present, a customer faced with a grossly inflated bill for a repair or for storage must either commence a costly replevin action or pay the amount demanded for the repair or storage in order to have the article returned. If he pays the amount in dispute, the customer may later bring suit against the repairer or storer to have some of the money returned. If the repairer becomes insolvent before the money is recovered, the customer is in the same position as any other unsatisfied creditor, and may find his claim for the amount he has paid under protest subordinate to the claims of secured creditors. Part III of the Discussion Draft proposes a system that would provide a low cost method of obtaining the return of the article while safeguarding the interests of both the customer and honest repairers and storers.

The draft Repair and Storage Lien Act is intended to serve as a model for discussion. It is not engraved in stone. I will welcome any suggestions that interested individuals or groups may have for improving the proposed legislation. Comments, briefs and suggestions should be sent by June 30, 1985, to the Policy Development Division, Ministry of the Attorney General, 15th Floor, 18 King Street East, Toronto, Ontario M5C 1C5.

Robert Welch

Robert S. Welch, Q.C.
Attorney General of Ontario

February, 1985

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INTRODUCTION

Repair and storage liens are seldom the subject of lawsuits. This is because the amounts involved usually are relatively small. It does not mean that all is right in this area of the law. Customers, repairers, storers and those with security interests in personal property have expressed their dissatisfaction with the existing law in numerous letters and telephone calls to the Ministries of Consumer and Commercial Relations and the Attorney General, and to members of the Legislative Assembly. In addition, the police have often become involved as people attempt to resolve the problems that arise because customers and other owners, repairers, storers and those with security interests do not understand their rights and obligations.

Persons who repair or improve articles of personal property, and those in the business of storing articles, have a legal right to retain the article in their possession until they are paid for their services. Articles include, vehicles, machinery, clothing, furniture and jewellery. This right, called a possessory lien, is an effective means for the recovery of the fee for service, directly related to the service provided. In general, the reasonableness of the possessory lien is not questioned.It satisfies the legitimate needs of both the persons providing the service and their customers. Customers need not pay for service until it is rendered, and repairers and storers may rely on the security of the lien to ensure that payment will be made.

The possessory lien for repairers is of ancient origin and part of the common law or traditional law. A possessory lien for persons in the storage business is derived from statute law.

Associated with the possessory lien is a statutory right to sell an article that has been repaired or stored, when the charges for the repair or storage remain unpaid for a significant period of time. Three different statutory sale provisions exist. Section 52 of the Mechanics' Lien Act, originally enacted in 1896, establishes a sale provision that applies to all repaired articles. The Warehousemen's Lien Act, originally enacted in 1924, establishes a sale provision that applies to all articles that are commercially stored. The Unclaimed Articles Act, originally enacted in 1947, establishes sale provisions for domestic articles of little value that are repaired or stored, or both repaired and stored. While the need for the remedy of sale is not questioned, the existing provisions appear to be in need of revision. In particular, the sale and notice of sale provisions of these Acts are not suited to the realities of the modern economy. Furthermore, the sale procedures of the three Acts are not uniform, and are inconsistent with the sale provisions of the Personal Property Security Act.

This discussion paper sets out proposals which in part codify and in other respects significantly revise repair and storage liens. The proposals are based on suggestions that have been made to the government over several years. The intention is to restate the law in systematic and comprehensive terms, to harmonize the system of liens in Ontario with the Personal Property Security Act, and to provide for rights and remedies that are more in tune with the commercial needs and expectations of all parties.

The paper is divided into two parts: Part I defines the objectives of, and the proposals for, change; Part II sets out a discussion draft of a proposed Repair and Storage Lien Act designed to implement the proposals, along with a section-by-section explanation of the discussion draft.

It is hoped that this paper will lead to a full and frank exchange of ideas. Often persons and groups who are in favour of a proposal put forward by the government for discussion assume that it is unnecessary to comment in favour of the proposal. This is usually not true. It is particularly untrue with respect to the proposals set out in this discussion paper. It is often difficult to gauge the public support or the entent of the need for certain proposals. For example, several garage operators have written to suggest the creation of a non-possessory repair and storage lien for vehicles. However, it is difficult to gauge whether there is general support for the proposal even within the vehicle repair industry. While the establishment of the system of non-possessory vehicle liens would not be very costly, it would involve some government expenditure. In these times of government restraint, the spending of even relatively small amounts must be carefully weighted against other competing priorities. Support would also be needed for the proposal designed to permit customers involved in disputes about charges for repair or storage, to obtain the release of the article by posting security with, or paying money into, court, pending resolution of the dispute. Therefore it is not only those who disagree with the proposals who should express their views. If the proposals contained in this discussion paper appear to have merit, individuals and consumer groups in favour of a particular proposal should advise the government of their support.

I OBJECTIVES OF AND PROPOSALS

1. Objective:- To state in clear language the lien rights and obligations of repairers and storers and the related rights and obligations of customers and persons who have a security interest in an article of personal property.

Proposal:- It is proposed that the common law possessory liens of artisans, mechanics and other persons who improve personal property and the statutory enforcement provisions which are section 52 of the Mechanics' Lien Act, the Warehousemen's Lien Act and the Unclaimed Articles Act (see Appendix "A") be replaced with a statutory code to govern lien rights and rights of disposition. A discussion draft of a proposed Repair and Storage Lien Act, intended to provide this code, is presented for consideration.

2. Objective:- To provide a balance between the rights of an owner of an article and others who have an interest in it to redeem the article within a reasonable time and the right of repairers and storers to sell the article as a means of recovering unpaid repair and storage charges.

Proposal:- The provisions in the three existing statutes relating to the redemption of an article, and the procedures for the sale or other disposition of an article by an unpaid repairer or storer are outdated. Unfortunately, the kinds of articles that may be given for repair, storage or both are quite diverse; for example, an airplane and an item of clothing given for cleaning. Nevertheless, in certain respects, there are common features to all such contracts. The Draft Act attempts to set down realistic rules which might apply in the case of all of these contracts. The discussion draft proposes that:-

a) customers of repair and storage services would have a minimum of 60 days following the time that an article is repaired or is to be returned from storage during which the article could be redeemed by paying for the service. A repairer or storer could take no steps to initiate sale or foreclosure until the 60 days had expired.

b) if the repaired or stored article is not redeemed within the 60 days, the repairer or storer may commence sale or foreclosure proceedings by giving the owner and persons having a security interest in the article fifteen days written notice of intention to sell or a written proposal of intention to retain the article. During the notice period, the article may be redeemed by payment of the fees for storage and repair and additional charges related to the giving of notice.

3. Objective:- To give repairers and storers a commercially reasonable means of recovering repair and storage charges.

Proposal:- It is proposed that the existing requirement of publishing newspaper advertisements concerning sale be replaced with a more realistic notice procedure under which written notice of sale would be sent by registered mail. It is also proposed that the requirement of sale by public auction be replaced by the right to sell by public sale or private sale (the same types of sale that may be made under the Personal Property Security Act). The repairer or storer would have the duty of proving that proper notice was given and that all aspects of any sale were commercially reasonable. In addition, the repairer or storer would be given a right similar to a foreclosure, under which the unpaid person might elect to retain the article by making a written proposal to the owner and to all persons having security interests. Those persons would have a right to object.

Sale or retention of the article by the repairer or storer would be deemed to be full satisfaction of the amount owing.

4. Objective:- To provide repairers and storers with a means of disposing of articles for which there is no ready market but for which there may be some value.

Proposal:- It is proposed that where the repairer or storer does not elect to sell or retain the article and keeps the article for twelve months without being paid, the repairer or storer may give the article to a registered charity, if the service charges exceed the value of the article. This procedure bears some similarity to a provision of the present Unclaimed Articles Act.

5. Objective:- To provide customers of repair and storage services with a means of recovering their property, without jeopardizing the security of the repairer or storer, where there is a dispute concerning the charges for repair or storage.

Proposal:- It is proposed that where a customer of repair or storage services believes that the price of the service exceeds the amount authorized or the fair value of the service provided, but the repairer or storer refuses to release the article until paid in full, the customer may pay the amount claimed or security for the amount claimed to a court. After making that payment, the customer would be entitled to have the article returned. The customer and the repairer or storer would either come to an agreement about payment, or the repairer or storer could prove to the court the fairness of the charges. The payment into court would be security for the repairer or storer.

6. Objective:- To create a means whereby a repairer or storer of a vehicle, for example, a truck or automobile, may release the vehicle to a customer but still retain a lien against the article.

Proposal:- It is proposed that a non-possessory lien be created for vehicles. The non-possessory lien would enable a repairer or storer to release a vehicle where the repair or storage charges remain unpaid in return for the lien against the vehicle that would be registered in the personal property security registration system and would have priority over registered security interests. In the event of continued non-payment by the customer, the vehicle could be seized and sold.

7. Objective:- To assure that the purchaser of an article sold by a repairer or storer gets good title to the article.

Proposal:- There is provision in the discussion draft Repair and Storage Lien Act to ensure that the purchaser of an article gets good title despite any procedural failure on the part of the repairer or storer. This provision would give protection to an innocent purchaser for value of an article sold by a repairer or storer. Without such a provision the value of a right of sale is seriously undermined.

Discussion Draft of
An Act to revise and
consolidate the Law related to
Repairers' and Storers' Liens

Contents

Section

1. Interpretation

PART I

Possessory Liens

2. Repairer's Lien
3. Storer's Lien
4. Loss of lien
5. Priority of Lien

PART II

Non-possessory Liens: Vehicles

6. Application
7. Non-possessory lien
8. Acknowledgment of indebtedness required
9. Registration of documents
10. Claim for lien
11. Change statements
12. Discharge
13. Correction of registrar's records
14. Seizure of vehicle

PART III

Redemption, Sale or Other Disposition

15. Sale of article
16. Proceeds of sale
17. Retention of article
18. Effect of sale or foreclosure; amount of lien deemed satisfied
19. Gift to charity
20. Effect of disposition on title of article
21. Liability of lien claimant for non-compliance
22. Redemption of article

PART IV

Dispute Resolution

23. Determination of rights by court
24. Possessory liens; return of article
25. Proper court

PART V

General

26. Service of documents
27. Lien claimant's rights and obligations
28. Assignment of lien
29. Regulations

PART VI

Miscellaneous

30. Transition
31-34. Complementary amendments
35. Repeals
36. Commencement
37. Short title

Interpretation

1.-(1) In this Act,

SECTION 1:

Section 1 is the definition section of the Act. The principal function of a definition section is to clarify the meaning of a statute by assigning specific meanings to the key words and phrases used in the Act. Once so defined, these words become terms of art; they are convenient short forms, carrying with them the meaning which has been ascribed to them in the definition section.

(a) "article" means tangible personal property other than fixtures;

CLAUSE 1(1)(a):

The liens and other rights provided for in this legislation apply only in respect of the repair, storage, or repair and storage, of those types of property which fall within the scope of the term 'article'. This term would include any item of movable, tangible personal property like vehicles, watches, furniture, jewellery, clothing, equipment and machinery. However, it would exclude fixtures, that is, personal property that has become attached to immovable property. A furnace is an example of a fixture. Repairs to fixtures are adequately provided for under the Construction Lien Act, 1983.

(b) "lien claimant" means a person who is entitled to claim a lien for the repair, storage or storage and repair of an article;

CLAUSE 1(1)(b):

The definition of lien claimant would include both a person having a possessory lien under Part I and a person having a non-possessory lien under Part II.

(c) "prescribed" means prescribed by a regulation made under this Act;

CLAUSE 1(1)(c):

This provision relates to the power to make regulations under section 29.

(d) "registrar" and "branch registrar" mean, respectively, the registrar and a branch registrar under the Personal Property Security Act, 1984;

CLAUSE 1(1)(d):

The provisions for a non-possessory lien are set out in Part II of the draft. It is not intended that a new system of registration be created. Instead, registration of non-possessory liens would be done in the same manner as the registration of a security interest under the Personal Property Security Act. Therefore, the provisions with respect to a registrar and branch registrar in this draft relate to the Personal Property Security Act.

(e) "repair" means an expenditure of money or the application of labour, skill or materials,

(i) in the manufacture of an article, or

(ii) to an article for the purpose of altering, improving or restoring its properties or maintaining its condition,

and includes the transportation of the article for purpose of making a repair;

CLAUSE 1(1)(e):

At common law, any person who bestows labour, skill or materials in the manufacture or repair of an article belonging to another person has a right to a lien against the article. The draft is intended to be a restatement of that right to a lien. It is intended to cover not only repairs to an article, but also the manufacture of an article in a situation where the maker would not be entitled to a lien under the Sale of Goods Act. For instance, this protection will be of benefit where goods are manufactured under certain types of licensing agreements where the manufacturer is not producing the articles directly for sale.

The definition of repair also includes the costs of transporting the article for repair. This expanded definition should be of benefit to those in the business of towing vehicles.

(f) "repairer" means a person who makes a repair on the understanding that the person will be paid for the repair;

CLAUSE 1(1)(f):

The dictionary definition of repairer is "one who or that which restores or mends". The definition in the Act is narrower. It should be noted that a lien exists only

where a repair is made by a person on the understanding that there will be a payment for the repair.

(g) "storer" means a person who receives an article for storage or storage and repair on the understanding that the person will be paid for the storage or storage and repair, as the case may be;

CLAUSE 1(1)(g):

The term "storer" replaces the term "warehouseman", which is used in the present Warehousemen's Lien Act. The dictionary definition of "storer" is "one who or a thing which keeps in a store". However, it should be noted that the term storer includes a person who stores and repairs an article. Thus, for example, a fur storage and cleaning business would be a storer under the Act.

(h) "vehicle" means an automobile, motorcycle, motorized snow vehicle, farm tractor, road building machine, trailer and any other vehicle drawn, propelled or driven otherwise than by muscular power and includes an aircraft but does not include,

(i) a vehicle that runs only on stationary tracks or rails, or

(ii) a boat or ship.

CLAUSE 1(1)(h):

Vehicle is defined for the purpose of Part II of the draft dealing with non-possessory liens. It should be noted that subsection 6(2) requires that there be a vehicle identification number before it can be the subject matter of a non-possessory lien. This is because a vehicle identification number search is the most convenient method for discovering the registration of a claim for lien. A prospective purchaser of a vehicle from a person other

than a dealer should make a search in the personal property security registration system before buying a vehicle. Without a unique identification number, it cannot be so registered.

It should be noted that the definition of vehicle is quite extensive. It is broader than the definition under the Highway Traffic Act since it includes aircraft, trailers, and farm machinery.

(2) In the absence of a written agreement to the contrary, a person with whom an article has been left for repair, storage or storage and repair, and who has forwarded the article to some other person for such purpose, shall be deemed to have performed the services and to be entitled to the rights of a repairer or storer against the person who left the article.

SUBSECTION 1(1)(2):

This provision is intended to add an element of flexibility to the scheme of rights created by the Act. In the modern marketplace, it is quite common for an owner to leave an article for repair or storage with a local agent. Often, the local agent will be a store which has exclusive dealership rights with respect to articles of a particular brand. In the case of firms that handle laundering and cleaning, a firm may simply be a broker. The local store does not make the repair itself or store the article itself, but instead forwards it to a repair centre, a wholesale cleaning establishment, or a wholesale warehouse. This provision would make it clear that the person to whom an article was taken for repair or storage

is entitled to the full rights of a repairer or storer against the person who left the article.

It should be noted that the provision can be overridden by contract. The reason for this is that a person may have a specific reason for taking an article, for example, a musical instrument, for repair to a particular repairer. In this case, the owner is contracting to have the repair done by that person and no lien rights should arise, and indeed damages may result, where the repairer has someone else perform the repairs.

PART I

Possessory Liens

Repairer's lien

2.-(1) A repairer has a lien against an article that the repairer has repaired for an amount equal to,

(a) the amount that the person who requested the repair agreed to pay; or

(b) where no such amount has been agreed upon, the fair value of the repair,

and the repairer may retain possession of the article until the amount is paid.

SUBSECTION 2(1):

This provision codifies the common law repairers' lien. The lien is the right to retain possession of the repaired article until paid for the repair.

When lien arises

(2) A repairer's lien arises and takes effect when the repair is commenced.

SUBSECTION 2(2):

This subsection makes it clear that the lien right begins when the repair is commenced. While it would be possible to have the lien right begin when the repair is completed, this would be unfair to repairers who are unable to complete a repair for some legitimate reason.

Disposition

(3) Upon the expiration of the sixty-day period following the day on which the amount required to satisfy the lien becomes due and payable, the repairer has the right to sell an article that is subject to a lien in accordance with Part III (Redemption, Sale or Other Disposition).

SUBSECTION 2(3):

At common law, a repairer doed not have the right to sell an article that is subject to a lien. Section 52 of the Mechanics' Lien Act, that now applies to the sale of a repaired article, requires a repairer to wait ninety days before beginning the sale procedure. This would appear unnecessarily long. A sixty-day period is proposed. The period begins from when the time the contract provides that the amount for the repair is due and payable. Where this is not provided for by contract, the time begins to run when the repair is completed.

Storer's lien

3.-(1) A storer has a lien against an article that the storer has stored for an amount equal to,

(a) the amount agreed upon for the storage or storage and repair of the article;

(b) where no such amount has been agreed upon, the fair value of the storage or storage and repair, including all lawful claims for money advanced, interest, insurance, transportation, labour, weighing, packing and other expenses incurred in relation to the storage or storage and repair of the article,

and the storer may retain possession of the article until the amount is paid.

SUBSECTION 3(1):

Subsection 3(1) creates a lien in favour of storers. It should be noted that the definition of storer includes those who store and repair articles. These provisions would, therefore, apply to cleaning and storage operations.

When lien arises

(2) A storer's lien arises and takes effect when the storer receives possession of the article for storage or storage and repair.

SUBSECTION 3(2):

This provision corresponds with subsection 2(2).

Notice to owner, etc., in certain cases

(3) Where the storer knows or has reason to believe that possession of an article subject to a lien was received from a person other than,

(a) its owner; or

(b) a person having its owner's authority,

the storer, within sixty days after the day of receiving the article, shall give written notice of the lien,

SUBSECTION 3(3):

This provision requires the storer to notify the owner of an article that is in the storer's possession, where it was left with the storer by a person other than the owner. This obligation is imposed only where the storer knows, or reasonably ought to know, that the article was left by a person other than the owner. For instance, a

(c) to every person whom the storer knows or has reason to believe is the owner or has an interest in the article, including every person who has a security interest in the article that is perfected by registration under the Personal Property Security Act, 1984 against the name of the person whom the storer knows or has reason to believe is the owner; and

1984,c...

(d) in addition to the notices required by clause (c) where the article is a vehicle,

(i) to every person who has a registered claim for lien against the article under Part II of this Act,

(ii) to every person who has a security interest in the vehicle that is perfected by registration under the Personal Property Security Act, 1984 against the vehicle identification number of the vehicle, and

1984,c...

R.S.O.1980, c.198

(iii) if the vehicle is registered under the Highway Traffic Act, to the registered owner.

vehicle may be towed by a municipal parking garage or impounded by the police. In such a case, the pound operator would be under a positive duty to notify the registered owner, other lien claimants that have registered claims for lien under this Act and secured creditors, that the vehicle is in the storer's possession. The effect of a failure to give the required notice is given in subsection 3(5). The provision corresponds with section 3 of the Warehousemen's Lien Act (see Appendix "A").

Contents of notice

(4) A notice under subsection (3) shall contain,

(a) a description of the article sufficient to enable it to be identified;

(b) the address of the place of storage, the date that it was received and the name of the person from whom it was received;

(c) a statement that a lien is claimed under this Act by the storer in respect of the article; and

(d) a statement advising how the article may be redeemed.

SUBSECTION 3(4):

This subsection sets out the information that must included out in a notice under subsection 3.

Effect of failure to give notice

(5) Where a storer fails to give the notice required by subsection (3), the storer's lien as against the person who should have been given the notice is limited to the unpaid amount owing in respect of the period of sixty days from the date when the article was received, and the storer shall surrender possession of the article to that person where the person proves a right to possession and pays that amount.

SUBSECTION 3(5):

Where the storer fails to give the notice required under subsection (3), the lien is limited to any unpaid amount owing in respect to the period of sixty days from the date when the article was left for storage.

Disposition

(6) Upon the expiration of the sixty-day period following the day on which the amount required to satisfy the lien becomes due and payable, the storer has the right to sell an article that is subject to a lien in accordance with Part III (Redemption, Sale or Other Disposition).

NOTE:

As now drafted, section 3 does not deal with several matters that may be of concern to commercial warehousemen and those in the cleaning and storage businesses. It does not deal, for example, with the situation of a wholesale cleaner and storer who does not deal directly with the owner of an article. Where furs are taken to a furrier for cleaning and storage, these furs are ordinarily

cleaned and stored by one of several large wholesalers. While the wholesale operator knows that the furs which have been brought to him are not the property of the furrier, the name and address of the owners are unknown. At present, this can create problems for both the owners of furs and the wholesaler, particularly in the case of an insolvency or bankruptcy of the furrier to whom the articles were taken by the owner. The comments of consumers and those involved in all aspects of this business are sought.

Another matter not dealt with in this section is the storage of inventory of a business by commercial warehousemen where there is an ongoing relationship between the business and the warehouseman. Billing takes place on a periodic basis and is unrelated to release of particular articles in storage. At present, commercial storage operations do not appear to have a lien on the articles, although the service provided protects the value of the articles. It would appear that there may be some warrant for a general lien in these circumstances. The comments of those involved in this business, their clients and those having security interests in this form of property are sought.

Loss of lien

4. A lien under this Part is discharged and cannot be revived as an interest in the article where possession of the article subject to the lien is surrendered to, or lawfully comes into the possession of, a person entitled to it.

SECTION 4:

A lien is essentially a right to retain possession of property. At common law, a possessory lien expires when possession of the property is surrendered by the person having the lien. If the property is unlawfully taken, for example, where it is improperly seized by the owner, the lien continues to exist. This is true also where the article is stolen from the possession of the person having a possessory lien.

Where a person having a possessory lien surrenders the article subject to the lien to its owner, the lien never revives. This is true even though the article may subsequently come lawfully into the hands of a repairer for the provision of further services. The new services to the article will give rise to a new lien but any debt that relates to former services is not secured by the article. This provision attempts to make this clear.

Priority of lien

5. A lien under this Part has priority over the interests of all other persons in the article.

SECTION 5:

At present, there is some uncertainty about the priority of rights of a person entitled to a possessory lien against third parties who have an interest in the same article.

Since the person having a possessory lien has enhanced the value of an article, or at least protected the article from harm, as a matter of policy, it would appear that the person having the possessory lien should be entitled to priority.

PART II

Non-possessory Liens: Vehicles

Application

6.-(1) This Part applies only to vehicles that have been repaired, stored or stored and repaired.

SECTION 6:

Part II of the draft creates a non-possessory lien for repairs to and storage of vehicles. The term "vehicle" is defined in clause 1(1)(h). The definition includes aircraft, trailers and farm equipment drawn by tractors.

It is often impractical and, indeed, counterproductive for a repairer or storer of vehicles to rely on a possessory lien as security for the price of a repair to a vehicle. The vehicle itself may be its owner's means of producing income necessary to pay for the repair. The repairer may not have the space for the storage of the vehicle.

In 1976, the Ontario Law Reform Commission proposed the creation of a non-possessory lien for vehicle repairers. This part extends the concept to the storage of vehicles.

Idem

(2) This Part does not apply to a vehicle that does not have a vehicle identification number.

SUBSECTION 6(2):

As a practical matter, the establishing of a non-possessory lien depends on whether it can be integrated into the personal property security registration system. This, in turn, depends on the vehicle having a vehicle identification number that can be registered under that system. Therefore, the subsection requires that a vehicle have a vehicle identification number. See the commentary on clause 1(1)(h).

Non-possessory lien

7.-(1) A lien claimant who is entitled to a lien under Part I (Possessory Liens) against a vehicle, and who surrenders possession of the vehicle without having been paid for the repair, storage or storage and repair, has in place of the possessory lien, a non-possessory lien against the vehicle for the amount of the lien claimed under Part I.

SUBSECTION 7(1):

A repairer or storer of a vehicle has a non-possessory lien where he surrenders possession of the vehicle without being paid for the services. It should be noted that, in order for the lien to be enforced, subsection 8(1) requires the repairer or storer to obtain a signed acknowledgement of the indebtedness.

When lien arises

(2) A non-possessory lien arises and takes effect when the lien claimant surrenders possession of the vehicle.

SUBSECTION 2:

The non-possessory lien takes effect from the surrender of the vehicle.

Priority

(3) A non-possessory lien has priority over the interest in the vehicle of any other person other than a lien claimant who is claiming a lien under Part I, and where more than one non-possessory lien is claimed in the same vehicle, priority shall be determined in the same manner as the proceeds of a sale are to be paid out under section 16.

SUBSECTION 7(3):

As set out in section 5, a possessory lien has priority over all other interests in an article. A non-possessory lien has, by virtue of this subsection, second highest priority. The full priority provisions are set out in section 16. The reasons underlying the system of priorities are the same as the reason for giving repair and storage liens priority over the interests of the owner and others having a security interest in the vehicle. The last person who provides repair or storage is maintaining or improving the value of the interest of all others in the property. Therefore, that person should rank first.

Period of credit not to affect lien

(4) A non-possessory lien is not extinguished by reason only that the lien claimant has allowed a period of credit for the payment of the debt to which the lien relates.

SUBSECTION 7(4):

A possessory lien is a right to retain an article until the lien claimant is paid the amount that is due and payable (see sections 2(1) and 3(1)). The granting of a period of credit, that is a period of time during which the debt is no longer due and payable, is inconsistent with a possessory lien. One purpose of Part II is to facilitate the granting of credit. Subsection 7(4) makes it clear that the granting of credit does not affect the non-possessory lien.

Acknowledgment of indebtedness required

8.-(1) A non-possessory lien is enforceable only if the lien claimant obtains a signed acknowledgment of the indebtedness which acknowledgment may be an invoice or other statement of account.

SUBSECTION 8(1):

This provision requires that the lien claimant obtain a signed acknowledgment of the indebtedness, which may be in the form of an invoice. This acknowledgment is necessary to enforce an non-possessory lien. This requirement is imposed for evidentiary purposes.

Idem

(2) An acknowledgment of indebtedness under subsection (1) is without prejudice to the right of the owner or any other person to dispute in a proceeding the amount that the lien claimant is owed.

SUBSECTION 8(2):

This provision permits a debtor to dispute the amount owed to a repairer or storer, even where the person signs an acknowledgement of indebtedness.

It is recognized that the provision is necessary to prevent the use of the lien rights provided to repairers or storers in an unfair manner. The consumer thus has a fair measure of protection. While the consumer acknowledges an indebtedness, the amount of that indebtedness can be determined by the courts.

Registration of documents

9.-(1) A document to be registered under this Part shall be in the prescribed form and may be tendered for registration at a branch office established under Part IV of the Personal Property Security Act, 1984, or by mail addressed to an address prescribed under that Act.

1984,c...

Errors in documents

(2) The registration of a document is not invalidated nor is its effect impaired by reason only of a defect, irregularity, omission or error unless the defect, irregularity, omission or error is likely to mislead materially a reasonable person.

SECTION 9:

It is contemplated that the Part II non-possessory lien be registered under the personal property security registration system. It also provides that errors, that are not likely to mislead anyone, do not invalidate the registration.

Claim for lien

10.-(1) A non-possessory lien is not enforceable against third parties unless a claim for lien has been registered, and where a person acquires an interest in the vehicle after the non-possessory lien arises, the interest of the person has priority over the non-possessory lien of the lien claimant if a claim for lien was not registered before the person acquired the interest.

SUBSECTION 10(1):

To be effective against third parties, a claim for lien in respect of a non-possessory lien must be registered. The liens and security interests to which the owner's interest in an article are subject must be capable of being discovered by purchasers and others. Therefore, this provision protects an innocent purchaser against an unregistered lien of a repairer or storer.

Idem

(2) A claim for lien,

(a) may be registered before or after the possession of the vehicle has been surrendered; and

(b) may relate to more than one vehicle.

SUBSECTION 10(2):

Clause (a) permits the claim for lien of a non-possessory lien claimant to be registered before or after surrender of the vehicle. Registration before surrender would enable the repairer or storer to protect himself against the interests of third parties that might arise immediately after surrender of the vehicle and before registration of the claim for lien. For example, the vehicle might be sold or a security interest granted to a lender.

Clause (b) simplifies the registration process where a repairer makes repairs to a number of vehicles belonging to the same person. Only one claim for lien need be registered.

Registration period

(3) A claim for lien is effective from the time assigned to the registration of the claim for lien by the registrar or branch registrar until the end of the expiration date set out in the claim for lien which date shall not be a date that is later than the third anniversary of the registration of the claim for lien.

SUBSECTION 10(3):

It is proposed in the Report of the Minister of Consumer and Commercial Relations Advisory Committee on the Personal Property Security Act (1984) that there be provision for registration periods of varying lengths. This provision will allow registration of liens of varying

periods to coincide with the period of credit that has been extended. The maximum registration will be three years. Although it is likely that most registration will be for a subtantially shorter period, the longer registration period may be useful where expensive repairs are made to an aircraft. It should be noted that the Ontario Law Reform Commission recommended a registration of a claim for lien for only six months.

Renewal

(4) The registration of a claim for lien may be renewed before the expiration of the registration period set out under subsection (3) by the registration of a change statement but in no case shall the period of registration be extended beyond the third anniversary of the registration of the claim for lien to which the change statement relates.

SUBSECTION 10(4):

This provision provides for the renewal of a claim before the expiration of the registration. It should be noted that the total registration period cannot be longer than three years from the date of the initial registration.

Assignment

(5) Where a claim for lien has been registered and the lien claimant has assigned the non-possessory lien, a change statement recording the assignment may be registered.

Idem

(6) Where a claim for lien has not been registered and the lien claimant has assigned the non-possessory lien before the registration of the claim for lien, a claim for lien may be registered,

(a) naming the assignor as the lien claimant and subsection (5) applies; or

(b) naming the assignee as the lien claimant and subsection (5) does not apply.

Changes in information

(7) Where the name or address of the lien claimant, assignee or owner is changed, or an error, omission, defect or irregularity was made in any document registered under this Act, a change statement recording the amendment of the document may be registered at any time during the remainder of the registration period.

SUBSECTIONS 10(5), (6) and (7):

Assignment of a non-possessory lien is registered by using a claim for lien where a claim is assigned before first registration of the claim for lien. The person to whom the claim for lien has been assigned may register the claim for lien in his or her name. After registration of the claim for lien, a change statement should be registered recording the assignment. See also section 28 of this draft.

Change statements

11. Registration of,

(a) a change statement under subsection 10(4) extends the effect of the registration of the claim for lien to which it refers until the end of the expiration date set out in the change statement; and

(b) any other change statement is effective during the remainder of the period for which the registration of the claim for lien to which it refers is effective.

SECTION 11:

This section sets out the effects of registration of the change statement.

Discharge

12.-(1) A non-possessory lien is discharged and cannot be revived as an interest in the article,

(a) upon payment to the lien claimant of the amount of the lien claimed;

(b) upon payment into court under Part IV (Dispute Resolution) of the amount set out in the claim for lien;

(c) upon the order of a court;

(d) upon the registration of a change statement recording the discharge;

(e) upon the expiry of the registration period of the claim for lien; or

(f) upon a change of ownership of the vehicle if a claim for lien was not registered before the change of ownership occurred.

Delivery of change statement

(2) Where a claim for lien is registered and the lien has been discharged, any person may, by written request, require the lien claimant to deliver to the person making the request a change statement recording the discharge.

Failure to deliver

(3) Where the lien claimant, without reasonable excuse fails or refuses to deliver a change statement requested under subsection (2) within ten days after the receipt of the request, the lien claimant shall pay to the person making the request $100 and damages resulting from the failure or refusal, which sum and damages are recoverable in any court of competent jurisdiction.

SECTION 12:

Subsection 12(1) establishes the events that will discharge a non-possessory lien. Subsection 12(2) requires a lien claimant, who is requested to do so, to deliver a change statement recording the discharge, where discharge has occurred. Subsection 12(3) makes a lien claimant who fails to deliver a change statement recordin the discharge liable to a penalty of $100, plus the damages that result from the failure to deliver a change statement recording the discharge. Experience under the Personal Property Security Act has shown that it is often difficult for an owner to obtain such discharges. The civil penalty of $100 is intended to encourage compliance. It is proposed that a warning will be printe on the claim for lien form to remind the claimant of the obligation to discharge the lien when the amount has been paid.

Correction of registrar's records

13. Upon application to the District Court, the court may order the registrar to amend the recorded information to indicate that the registration of a claim for lien has been discharged or has been partially discharged, upon any grounds and subject to any conditions that the court considers appropriate in the circumstances.

SECTION 13:

This section allows for a general power in the District Court to amend the recorded information to indicate that the claim for lien has been discharged or partially discharged.

Seizure of vehicle

14.-(1) A lien claimant who has a non-possessory lien and who has registered a claim for lien may deliver at any time to the sheriff of the county or district in which the vehicle is located a copy of the registered claim for lien and a direction to seize the vehicle.

SECTION 14:

The ultimate remedy for a lien claimant who has a non-possessory lien that has been registered is to have the vehicle seized and to sell the vehicle in accordance with the Act.

SUBSECTION 14(1):

This subsection permits the lien claimant who has a non-possessory lien to have the sheriff in the locale in which the vehicle is located seize the vehicle.

Idem

(2) Upon receipt of a copy of a registered claim for lien and a direction to seize a vehicle under subsection (1), the sheriff shall seize the vehicle described in the direction wherever it may be found and shall deliver the vehicle to the lien claimant who issued the direction.

SUBSECTION (14)2:

This subsection requires the sheriff to seize the vehicle and authorizes him to do so.

Other powers of seizure not affected

(3) Nothing in subsection (1) or (2) prevents a lien claimant from exercising any lawful power of seizure with respect to the vehicle whether provided for by contract or otherwise available to the lien claimant by law.

SUBSECTION 14(3):

This subsection preserves any rights that may have been contracted for or that may exist apart from the lien legislation for seizure of the vehicle.

Limitation

(4) Notwithstanding subsection (2) or (3), a vehicle shall not be seized if the vehicle is in the possession of a lien claimant who claims to be entitled to a lien against the vehicle under Part I (Possessory Liens).

SUBSECTION 14(4):

Subsection 14(4) establishes, in the context of seizure, the paramount right of a person having a possessory lien to retain the vehicle, even against the lien claimant who has a non-possessory lien. Thus, the sheriff is not empowered to seize a vehicle that is in the possession of a repairer or storer.

Disposition

(5) A lien claimant who has a non-possessory lien against a vehicle has a right to sell the vehicle in accordance with Part III (Redemption, Sale or Other Disposition) if,

(a) the vehicle has been seized and is in the possession of the lien claimant;

(b) at least sixty days have expired since the day when the non-possessory lien arose; and

(c) any part of the amount to which the lien relates is due but unpaid.

SUBSECTION 14(5):

This subsection establishes the three preconditions to a sale by a person having a non-possessory lien.

PART III

Redemption, Sale or Other Disposition

Sale of article

15.-(1) A lien claimant who has a right to sell an article under Part I (Possessory Liens) or Part II (Non-possessory Liens: Vehicles) shall not exercise that right unless the lien claimant has given notice of intention to sell the article.

SECTION 15:

Section 52 of the Mechanics' Lien Act and the Warehousemen's Lien Act require publication in a newspaper of a notice of intention to sell before an article is sold. It is suggested that this is ineffective and costly. Therefore, the publication requirements have been eliminated in this draft. Section 15 requires instead that a notice of intention to sell an article setting out all the relevant information must be given by a person who has a possessory lien and a person who has a non-possessory lien on a vehicle. A lien claimant who sells without following the procedure for giving notice of intention to sell is liable for damages.

Idem

(2) A notice of intention to sell an article shall be in writing and shall be given at least fifteen days before the sale to,

(a) the person from whom the article was received for repair, storage or storage and repair;

(b) where the article was received for repair, storage or storage and repair from a person other than the owner,

R.S.O.1980, c.198

(i) the person who is the registered owner of the article, where the article is a vehicle registered under the Highway Traffic Act, or

(ii) the person the lien claimant knows or has reason to believe is the owner, where the article is not a vehicle registered under the Highway Traffic Act, if the identity of that person is known to the lien claimant at the time the notice is given to the person who left the article for repair or storage;

(c) every person who has a security interest in the article under the Personal Property Security Act, 1984 that is perfected by registration against,

1984,c...

(i) the vehicle identification number,

(ii) the name of the owner, where the owner is a person entitled to notice under clause (a) or (b);

(d) where the article is a vehicle, every person who has registered a claim for lien against the vehicle under Part II.

SUBSECTION 15(2):

Subsection 15(2) sets out the persons to whom the notice of intention to sell must be given.

Contents of notice

(3) The notice required by subsection (2) shall contain,

(a) a description of the article sufficient to enable it to be identified;

(b) a statement of the amount required to satisfy the lien, as of the time when the notice is given and, in the case of a vehicle, any costs of seizure;

(c) a statement of the method of calculating, on a daily basis, any further costs for storage or preservation of the article that may be incurred between the time when the notice is given and the time when the sale is to take place;

(d) a statement that the article may be redeemed by any person entitled to receive notice by payment of the amount determined under clauses (b) and (c) plus any other reasonable costs incurred in preparing the article for sale;

(e) a statement of,

(i) the name of the person to whom payment may be made,

(ii) the address where the article may be redeemed,

(iii) the times during which redemption may be made,

(iv) the telephone number, if any, of the person giving notice;

(f) a statement of the date, time and place of any public sale at which the article is to be sold, or the date after which any private sale of the article is to be made; and

(g) a statement that the article may be sold unless it is redeemed on or before the day required to be specified in the notice by clause (f).

SUBSECTION 15(3):

This subsection sets out the prescribed contents of a notice of intention to sell. It should be noted that the prescribed contents are specific to enable those persons who have a right to redeem the article the opportunity to calculate the cost of redemption.

Method of sale

(4) The article may be sold in whole or in part, by public or private sale, at any time and place, on any terms, so long as every aspect of the sale is commercially reasonable.

SUBSECTION 15(4):

The sale procedure set out in subsection 15(4) is a significant departure from the sale procedure now available to those having repair and storage liens. At present, only public sale is permitted. However, many articles will realize a better price if sold by private sale. The lien claimant selling an article has the obligation of proving that every aspect of the sale is commercially reasonable if a sale is challenged by a person with an interest in the article.

Purchase by lien claimant

(5) The lien claimant may purchase the article only at a public sale.

SUBSECTION 15(5):

This subsection permits the lien claimant to purchase the article only at a public sale. This restriction is intended to ensure that a fair price is obtained for the article being sold.

Proceeds of sale

16.-(1) Where a lien claimant has sold an article under this Part, the proceeds of sale shall be applied consecutively,

(a) to the reasonable expenses of selling the article;

(b) to the reasonable expenses mentioned in subsection 27(2) and, where a vehicle is sold by a non-possessory lien claimant, the costs of the seizure of the vehicle;

(c) where the lien claimant making the sale has a possessory lien under Part I whether or not the article is a vehicle, to the satisfaction of the lien of the lien claimant making the sale;

(d) where the lien claimant making the sale has a possessory lien under Part I and the article is a vehicle, to the satisfaction of the lien of every lien claimant who has a registered non-possessory lien under Part II against the vehicle, who gives the lien claimant making the sale written notice of the amount owing in respect of the registered non-possessory lien claimed by the person giving the notice before or within ten days after the sale, in reverse order to the order of registration of their respective claims for lien;

(e) where the lien claimant making the sale has a non-possessory lien under Part II, to the satisfaction of the lien of the lien claimant making the sale and to the satisfaction of the lien of every other lien claimant who has a registered non-possessory lien under Part II against the vehicle, who gives the lien claimant making the sale written notice of the amount owing in respect of the registered non-possessory lien claimed by the person giving the notice before

SUBSECTION 16(1):

Subsection 16(1) sets out the priorities for distributing the proceeds of sale. The sequence is established following the principles of the Act. Those making the last contribution to maintaining or improving the value of the article have priority over those whose interests are more remote. Since the last repairer or storer to provide services ranks first, it is unneccesary for that person to make a search in the personal property security registration system before making a repair to or storing an article.

or within ten days after the sale, in reverse order to the order of registration of their respective claims for lien;

1984,c...

(f) to the payment of every person who has a perfected security interest in the article under the Personal Property Security Act, 1984 who was entitled to notice under subsection 15(2), who gives the lien claimant written notice of the amount owing in respect of the perfected security interest claimed by the person giving the notice before or within ten days after the sale, in accordance with the priority rules under that Act; and

(g) to the payment of the owner or other person entitled thereto, if the lien claimant has actual knowledge of the claim of that person.

Payment into court

(2) Where there is a question concerning the right of any person to share in the proceeds of a sale, the lien claimant may pay the proceeds or any part thereof into court and the proceeds shall not be paid out of court except in accordance with an order made under section 23.

SUBSECTION 16(2):

This subsection allows questions regarding shares of the proceeds to be determined by the courts.

Retention of article

17.-(1) A lien claimant who has a right to sell an article may propose, in lieu of selling it, to retain the article in satisfaction of the amount of the lien claimed by giving written notice of the proposal to the persons entitled to notice under subsection 15(2).

SECTION 17:

This section gives lien claimants a remedy at present unavailable to those with liens. It is a remedy now available to those having a security interest under the Personal Property Security Act. The remedy is retention of the article and foreclosure of other interests.

A lien claimant who has the right to sell an article, whether the lien is a possessory lien or a non-possessory lien on a vehicle, may make a proposal to retain the article. Notice of the proposal must be given to those entitled to notice of sale under subsection 15(2).

Objection

(2) Where a person entitled to notice under subsection (1) gives the lien claimant a written objection to the proposal within sixty days of the receipt of the proposal, the lien claimant, subject to subsections (3) and (4), shall sell the article in accordance with section 15.

SUBSECTIONS 17(2) and (3):

These subsections provide that those entitled to the notice may object to the proposal to retain. However, where there is no legitimate commercial reason for the objection to the proposal, the District Court may order that the objection is ineffective. If the objection is not challenged or is upheld by the Court, the lien claimant must sell the article.

Application to District Court

(3) Upon application to the District Court and upon notice to every person who has given a written objection to the proposal, the court may order that the objection is ineffective because,

(a) the objection was made for a purpose other than the protection of the interest in the article of the person who made the objection; or

(b) the fair market value of the article is less than the amount of the lien of the lien claimant and the estimated expenses to which the lien claimant is entitled under this Act.

Foreclosure

(4) If no effective objection is made, the lien claimant, at the expiration of the sixty-day period mentioned in subsection (2), shall be deemed to have irrevocably elected to retain the article and thereafter is entitled to hold or dispose of the article free from the rights and interests of every person to whom the written notice of the proposal was given.

SUBSECTION 17(4):

This subsection permits the lien claimant to retain the article and forecloses the interests of all persons who receive the notice, if no objection is made during the sixty-day period following receipt of the proposal or if the court orders that the objection is ineffective.

Effect of sale or foreclosure; amount of lien deemed satisfied

18. Where a lien claimant,

(a) sells an article under section 15; or

(b) is deemed to have elected irrevocably to retain the article under subsection 17(4),

the lien claimant shall be deemed to have sold the article or retained the article in full satisfaction of the amount owing in respect of the lien.

SECTION 18:

If a lien claimant decides to sell an article or to retain the article after following the procedure under subsection 17(4), the debt arising out of the repair or storage is deemed to be fully satisfied. Therefore, sale or foreclosure must be looked at as alternatives to an action for the debt. As a practical matter, persons in the repair or storage business before rendering services should decide that either the consumer is credit worthy or that the article may be sold to realize the value of a lien.

Gift to charity

R.S.C.1952, c.148

19.-(1) A lien claimant who has retained possession of an article for twelve months after the right to sell the article arose may give the article to a charity registered under the Income Tax Act (Canada) if,

(a) the article has a fair market value of less than the total of the amount of the lien claimed by the lien claimant and the amount of the estimated expenses to which the lien claimant is entitled under this Act; and

(b) the lien claimant has not given a notice of intention to sell under section 15 or a notice of a proposal to retain the article under section 17.

SECTION 19:

This provision retains a concept now contained in the Unclaimed Articles Act. Where a lien claimant has retained possession of an article for a long period of time, and where the value of the lien exceeds the amount that could be realized through sale, the lien claimant is entitled to donate the article to a charity registered under the Income Tax Act. The requirement under the Unclaimed Articles Act of maintaining a record of the articles disposed of and the charity to which it was given

Records to be maintained

(2) A lien claimant who disposes of an article under this section shall maintain a record of the article disposed of and the charity to which it was given.

is retained. The advantages of the secton 19 procedure are that it relieves the lien claimant of the notice and other procedural requirements of the other remedies created by the Act and allows the lien claimant to sue for the debt.

Effect of disposition on title of article

20.-(1) Although a lien claimant has failed to comply with this Part, a purchaser who buys an article in good faith,

(a) in a sale under section 15; or

(b) from a lien claimant who has retained an article under section 17,

acquires the article free of the interest of the owner and any person entitled to notice under this Part.

Idem

(2) A charity that is given an article by a lien claimant under section 19, acquires the article free of the interest of the owner and all other persons.

SECTION 20:

Section 20 assures that a purchaser who buys an article in good faith from a repairer or storer acquires good title to the article despite the failure of the repairer or storer to comply with the requirements of the Act. Similarly, a charity that is given an article by a repairer or storer acquires good title.

Liability of lien claimant for non-compliance

21. A lien claimant who fails to comply with the requirements of this Part is liable to any person who suffers damages as a result and shall pay the person an amount equal to the greater of $200 or the actual damages.

SECTION 21:

The repairer or storer who is a lien claimant must comply with the requirements of this part with respect to sale, retention, or gift to charity. Failure to comply makes the person liable to at least $200 in damages or the actual damages where the damages exceed $200.

Redemption of article

22. At any time before the lien claimant,

(a) has sold the article under section 15 or contracted for such sale;

(b) is deemed to have irrevocably elected to retain the article under section 17; or

(c) has given the article to a charity under section 19,

any person entitled to notice under subsection 15(2) may redeem the article by paying the amount required to satisfy the lien.

SECTION 22:

This provision confers the right on owners, and those having other interests in the article, to redeem it prior to the sale or the irrevocable election of the lien claimant to retain the article.

PART IV

Dispute Resolution

Determination of rights by court

23.-(1) Any person may apply to a court for a determination of the rights of the parties where a question arises with respect to,

SECTION 23:

Section 23 provides for a summary application where a

(a) the seizure of a vehicle under Part II (Non-possessory Liens: Vehicles), or any right of seizure in respect of a vehicle;

(b) the sale of an article under Part III (Redemption, Sale or Other Disposition);

(c) the distribution of the proceeds of the sale of an article under Part III, including the right of any person to share in those proceeds, and the obligation of any lien claimant to account for those proceeds;

(d) the amount of a lien or the right of any person to a lien,

and the court may make such order as it considers necessary to give effect to those rights.

Limitation

(2) An application shall not be made under clause (1)(d) where an application has been made under section 24.

dispute arises concerning the rights of various persons under this Act.

Possessory liens; return of article

24.-(1) Where a lien is claimed under Part I (Possessory Liens) and the lien claimant refuses to surrender possession of the article to its owner or any other person entitled to it, because of non-payment and there is,

(a) a dispute concerning the amount of the lien of the lien claimant including any question relating to the quality of the repair, storage or storage and repair; or

(b) in the case of a repair, a dispute concerning the amount of work that was authorized to be made to the article,

SECTION 24:

In the past, there have been complaints that some repairers and storers have abused their lien rights under existing legislation by refusing to surrender possession of the articles which they have stored or repaired unless they are paid more than they are justly entitled to receive. Consumers have complained about being victimized by unscrupulous tradesmen, who insisted upon payment of an exorbitant amount before they would release the articles subject to their liens. These complaints relate to only a

the owner or other person lawfully entitled to the article may apply to the court in accordance with the procedure set out in this section to have the dispute resolved and the article returned.

small minority of repairers and storers. However, the complaints have been sufficiently widespread and serious to suggest that a legislative response is necessary. Existing legislation does not provide expeditious relief, yet, in many cases, unless a consumer can obtain his legal remedy quickly, his theoretical legal rights are of little value at all. Of course, it is necessary to strike a delicate balance so as to protect consumers from abuse, while at the same time providing repairers and storers with realistic protection for their rights.

SUBSECTION 24(1):

This provision permits the owner, or other person entitled to possession of an article, to regain possession of that article from a lien claimant, where there is a dispute concerning the amount of the lien, including questions related to the quality of the service or to the amount of work that was authorized.

Respondent

(2) The lien claimant shall be named as the respondent in the application.

Form

(3) The application shall be in the prescribed form and may include an offer of settlement.

SUBSECTIONS 24(2) and (3):

These two subsections establish the new procedure. In order to obtain release of the article from the lien claimant, the owner or other person entitled to the article must post security with the court for the full claim of the lien claimant. There may be an offer of settlement made by the person entitled to the article, in which case that amount must be in money.

Payment into court

(4) The applicant shall pay into court, or deposit security with the court in the amount of, the full amount claimed by the respondent but where the applicant includes an offer of settlement in the application, the applicant shall pay into court the amount offered in settlement and shall pay into court, or deposit security with the court for, the balance of the full amount claimed by the respondent and payments and deposits under this subsection shall be made to the credit of the application.

Initial certificate

(5) Where money is paid into court or a deposit is made with the court under subsection (4), the clerk or registrar of the court shall issue an initial certificate in the prescribed form and under the seal of the court stating that the amount indicated therein, or security therefor, has been paid into or posted with the court to the credit of the application, and where applicable, indicating the portion of that amount that is offered in settlement of the dispute.

SUBSECTION 24(5):

This subsection provides for the issuance by the court of a certificate indicating the amount that has been paid into court for the security and the amount offered in settlement.

The lien claimant having possession of the article is required to release it, unless the lien claimant has an objection to the amount that has been posted as security; that is, the amount the lien claimant claims is owing. In that case, the lien claimant must file with the court a notice of objection.

Release on interim certificate

(6) The initial certificate shall be given to the respondent and the respondent, within three days of being given the initial certificate, shall release the article described therein to the applicant unless, within the three day period, the respondent files with the court a notice of objection in the prescribed form.

Final certificate

(7) Where an objection has been filed with the court, the applicant may pay into court or post security with the court, to the credit of the application, the additional amount claimed as owing in the objection, and where the additional amount has been paid into court or the additional security has been posted, the clerk or registrar shall issue a final certificate in the prescribed form and under the seal of the court.

SUBSECTION 24(7):

Where an objection has been filed, subsection 7 allows the person entitled to the article to increase the security, in which case a final certificate is issued which requires the immediate release of the article by the lien claimant.

Release on final certificate

(8) The final certificate shall be given to the respondent and the respondent, upon being given the final certificate, shall release immediately the article described therein.

Writ of seizure

(9) Where the respondent does not release the article as required, the applicant may obtain from the clerk or registrar of the court, without notice to the respondent, a writ of seizure directing the sheriff to seize the article and, upon receipt of the writ, the sheriff shall seize the article and return it to the applicant.

SUBSECTION 24(9):

This subsection provides for seizure of the article by the sheriff from a lien claimant who has failed to release the article as required.

Payment out of court of settlement

(10) Where the respondent releases the article to the applicant in compliance with an initial or final certificate, or where the article is seized by a sheriff under a writ of seizure, the respondent may demand a receipt in the prescribed form to this effect, and upon presentation of the receipt to the clerk or registrar of the court and signing a waiver of further claim in the prescribed form, the respondent shall be paid the portion of the amount paid into court that was offered in settlement of the dispute.

Notice to applicant

(11) Where the respondent accepts the amount offered in settlement of the dispute, the clerk or registrar of the court shall notify the applicant and upon request shall return to the applicant the balance of the amount deposited into court and deliver up any security deposited by the applicant for cancellation.

SUBSECTIONS 24(10) and (11):

These provisions together provide for a situation where a lien claimant releases an article and accepts the amount offered by the person entitled to the article in settlement of the dispute.

Substitution of security

(12) Where the article is released to the applicant by the respondent or is seized by the sheriff under subsection (9), the lien is discharged as a right against the article and becomes instead a charge upon the amount paid into

SUBSECTION 24(12):

This subsection provides that, when the article is released, the security posted with the court stands to protect the interest of the lien claimant.

court or the security posted with the court, and where the respondent seeks to recover the full amount claimed by the respondent to be owing, the respondent may commence an action to recover that amount.

The lien claimant has ninety days in which to decide whether to accept the applicant's offer of settlement or to commence an action to recover the amount for the repair and storage. If nothing is done by the lien claimant in the ninety days, the security is returned to the person who posted it.

Return of security

(13) Where, within ninety days of the date when the article was returned to the applicant or seized, the respondent has not,

(a) accepted the applicant's offer of settlement; or

(b) commenced an action to recover the amount claimed,

the charge upon the money paid into court or the security posted with the court is discharged and the money paid into court shall be returned to the applicant and any security posted with the court shall be delivered up for cancellation.

Proper court

25. An application under this Part may be brought in any court of appropriate monetary and territorial jurisdiction.

SECTION 25:

This section makes provision for the bringing of applications in the appropriate court. Where the amount

in dispute is $1,000 or less, it may be brought in the Small Claims Court. In Metropolitan Toronto, where the amount in dispute is $3,000 or less, it can be brought in the Provincial Court (Civil Division). Both of these courts have less formal procedures than the District Court and High Court. Disputes involving greater amounts can be brought in the District Court or High Court.

PART V

General

Service of documents

26.-(1) A document required to be given or that may be given under this Act is sufficiently given if given personally to the intended recipient or sent by certified or registered mail to the intended recipient at,

(a) the intended recipient's address for service if there is one;

(b) the last known mailing address of the intended recipient according to the records of the person sending the document, where there is no address for service; or

(c) the most recent address of the intended recipient as shown on a claim for lien registered under this Act or as shown on financing statement registered under the Personal Property Security Act, 1984.

1984,c...

SECTION 26:

This provision establishes the rules for service of documents.

Service by mail

(2) A document sent to the intended recipient by certified or registered mail shall be deemed to have been given on the earlier of,

(a) the day the intended recipient actually receives it; or

(b) the sixth day after the day of mailing.

Lien claimant's rights and obligations

27.-(1) Where an article that is subject to a lien is in the lien claimant's possession, the lien claimant,

(a) shall use reasonable care in the custody and preservation of the article, unless a higher standard of care is imposed by law; and

(b) unless otherwise agreed,

(i) shall keep the article identifiable, and

1984,c...

(ii) may create a security interest under the Personal Property Security Act, 1984 in the article, but only upon terms that do not impair a right of redemption under that Act or this Act.

SUBSECTION 27(1):

This provision sets out the lien claimant's responsibility towards the article while it is in his possession.

Reasonable expenses

(2) Unless otherwise agreed, a lien claimant is entitled to recover the reasonable expenses incurred in the custody and preservation of an article that is subject to a lien including the cost of insurance and the payment of taxes or other

SUBSECTION 27(2):

Subsection 27(2) provides that the lien claimant is entitled to recover the reasonable expenses incurred in retaining custody and preserving the article that is

charges incurred therefor and the expenses are chargeable to and secured by the article and may be included by the lien claimant in determining the amount required to satisfy the lien.

subject to a lien.

Effect of failure to meet obligation

(3) A lien claimant is liable for any loss or damage caused by a failure to meet any obligation imposed by this section but does not lose the lien against the article by reason only of that failure.

SUBSECTION 27(3):

This provision clarifies the issue of whether a negligent lien claimant loses the lien as a result of a breach of duty. While the lien is retained, the repairer or storer will be liable in damages for a failure to meet his or her obligations.

Use of article

(4) A lien claimant may use an article,

(a) for the purpose of preserving the article or its value;

(b) for the purpose of making a reasonable demonstration of the quality or properties of the article in order to facilitate the making of a sale under this Act; or

(c) in accordance with an order of any court before which an application is being heard or an action is being tried in respect of that article.

SUBSECTION 27(4):

This subsection establishes the limited uses which a lien claimant may make of an article.

Effect of unauthorized use or dealing

(5) Where the lien claimant uses or deals with an article in a manner not authorized by this Act, the lien claimant is liable for any loss or damage caused by that use or dealing and may be restrained by an injunction.

SUBSECTION 27(5):

This provision makes it clear that a misuse by a lien claimant of an article that is in his or her possession can result in legal action for loss or damage to the article. It also permits the owner, or other person with an interest in an article, to obtain an injunction from a court to restrain misuse by a lien claimant.

Assignment of lien

28.-(1) A lien claimant may assign the lien claimant's right to a lien by an instrument in writing.

Idem

(2) Where a lien claimant assigns a possessory lien under Part I, the lien claimant shall deliver possession of the article to the assignee at the time of the assignment.

Idem

(3) An assignment of a non-possessory lien under Part II is not enforceable against third parties unless a change statement recording the assignment has been registered under subsection 10(5) or a claim for lien has been registered under clause 10(6)(b).

SECTION 28:

This section establishes the requirements for assignments of a lien. See also subsections 10(5) and 10(6) and the related commentary.

Regulations

29. The Lieutenant Governor in Council may make regulations,

(a) requiring the payment of fees for the issue, filing or registration of any document and the execution of any direction, writ or order under this Act and prescribing the amount thereof;

(b) prescribing forms, the information to be contained in forms, the manner of recording the information and the persons who shall sign forms;

(c) requiring that claim for lien forms and change statements forms to be registered under Part II shall be those provided or approved by the registrar;

(d) governing the time assigned to the registration of claims for lien and change statements;

(e) prescribing abbreviations, expansions or symbols that may be used in a claim for lien or change statement or in the recording or production of information by the registrar;

(f) providing for the approval by the registrar of claim for lien forms and change statement forms to be registered under Part II and for the withdrawal by the registrar of any such approval.

SECTION 29:

This provision sets out the subject matter of regulations that may be made under the Act.

PART VI

Miscellaneous

Transition

30.-(1) Where under any Act, a person has or is entitled to a lien that may be enforced in the manner provided by section 52 of the Mechanics'

SECTION 30:

Section 30 is an attempt to devise transitional provisions

Lien Act, being chapter 261 of the Revised Statutes of Ontario, 1980, or in the manner provided by the Warehousemen's Lien Act ,being chapter 529 of the Revised Statutes of Ontario, 1980, the person shall be deemed to be a lien claimant having a possessory lien under Part I (Possessory Liens) of this Act and the lien may be enforced under Part III (Redemption, Sale or Other Disposition) of this Act.

Idem

(2) For the period of six months following the day this Act comes into force, a lien that arose before that day and which could have been enforced under section 52 of the Mechanics' Lien Act, being chapter 261 of the Revised Statutes of Ontario, 1980, or under the Warehousemen's Lien Act, being chapter 529 of the Revised Statutes of Ontario, 1980, or under the Unclaimed Articles Act, being chapter 513 of the said Revised Statutes, may continue to be enforced as if those Acts had not been repealed or the person claiming the lien may enforce the lien under Part III of this Act as if the lien were a possessory lien under Part I and, after the expiry of the six-month period, the person claiming the lien may enforce the lien only under Part III of this Act as if it were a possessory lien under Part I.

suitable for this Act, and for the repeal of the Mechanics' Lien Act, the Warehousemen's Lien Act, and the Unclaimed Articles Act. These provisions should be carefully reviewed by those experienced in the several types of businesses that may be affected by the legislation to ensure that no transitional problems will arise as a result of the enactment of the new Act.

31. Subsection 2(8) of the Compulsory Automobile Insurance Act, being chapter 83 of the Revised Statutes of Ontario, 1980, is amended by striking out "section 52 of the Mechanics' Lien Act" in the third line and inserting in lieu thereof "the Repair and Storage Lien Act, 1984".

32.-(1) Subsection 147(13) of the Highway Traffic Act, being chapter 198 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 63, section 33, is further amended by striking out "section 52 of the Mechanics' Lien Act" in the eighth and ninth lines and inserting in lieu thereof "the Repair and Storage Lien Act, 1984".

(2) Subsection 190(5) of the said Act is amended by striking out "section 52 of the Mechanics' Lien Act" in the fourth line and inserting in lieu thereof "the Repair and Storage Lien Act, 1984".

(3) Subsection 192(4) of the said Act is amended by striking out "section 52 of the Mechanics' Lien Act" in the third and fourth lines and inserting in lieu thereof "the Repair and Storage Lien Act, 1984".

(4) Subsection 192(6) of the said Act is amended by striking out "section 52 of the Mechanics' Lien

SECTIONS 31 and 32:

These provisions set out consequential amendments required in respect of provisions that rely on the legislation which is being repealed.

APPENDIX "A"

CHAPTER 261

Mechanics' Lien Act

LIENS ON CHATTELS

Right of chattel lienholder to sell chattel

52.—(1) Every person who has bestowed money, skill or materials upon any chattel or thing in the alteration or improvement of its properties or for the purpose of imparting an additional value to it, so as thereby to be entitled to a lien upon the chattel or thing for the amount or value of the money or skill and material bestowed, has, while the lien exists but not afterwards, in case the amount to which he is entitled remains unpaid for three months after it ought to have been paid, the right, in addition to any other remedy to which he may be entitled, to sell by auction the chattel or thing on giving one week's notice by advertisement in a newspaper having general circulation in the municipality in which the work was done, setting forth the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the auctioneer, and leaving a like notice in writing at the last known place of residence, if any, of the owner, if he is a resident of the municipality.

Application of proceeds of sale

(2) Such person shall apply the proceeds of the sale in payment of the amount due to him and the costs of advertising and sale and shall upon application pay over any surplus to the person entitled thereto. R.S.O. 1970, c. 267, s. 48.

CHAPTER 529

Warehousemen's Lien Act

1. In this Act, Interpretation

(*a*) "charges" has the meaning assigned to it in section 2;

(*b*) "goods" includes all chattels personal other than things in action and money;

(*c*) "warehouseman" means a person who receives goods for storage for reward. R.S.O. 1970, c. 488, s. 1.

2.—(1) Subject to section 3, every warehouseman has a lien on goods deposited with him for storage, whether deposited by the owner of the goods or by his authority, or by any person entrusted with the possession of the goods by the owner or by his authority. Lien

(2) The lien is for the amount of the warehouseman's charges, that is to say, Amount of lien

(*a*) all lawful charges for storage and preservation of the goods; and

(*b*) all lawful claims for money advanced, interest, insurance, transportation, labour, weighing, cooperage, and other expenses in relation to the goods; and

(*c*) all reasonable charges for any notice required to be given under this Act and the *Warehouse Receipts Act* and for notice and advertisement of sale, and for sale of the goods where default is made in satisfying the warehouseman's lien. R.S.O. 1970, c. 488, s. 2. R.S.O. 1980, c. 528

3.—(1) Where the goods on which a lien exists were deposited not by the owner or by his authority, but by a person entrusted by the owner or by his authority with the possession of the goods, the warehouseman, within two months after the date of the deposit, shall give notice of the lien, Notice of lien when goods in hands of agent, etc.

(*a*) to the owner of the goods, including the person in whom the right of property therein is vested where a financing statement in respect of a security interest in the goods is registered under the *Personal Property Security Act* at the date of deposit; and R.S.O. 1980, c. 375

(*b*) to the grantee of the goods under any bill of sale registered under the *Bills of Sale Act* at that date. R.S.O. 1980, c. 43

Form of notice

(2) The notice shall be in writing and shall contain,

(*a*) a brief description of the goods; and

(*b*) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman, and the name of the person by whom they were deposited; and

(*c*) a statement that a lien is claimed by the warehouseman in respect of the goods under this Act.

Failure to give notice

(3) Where the warehouseman fails to give the notice required by this section, his lien, as against the person to whom he has failed to give notice, is void as from the expiration of the period of two months from the date of the deposit of the goods. R.S.O. 1970, c. 488, s. 3.

Sale by public auction

4. (1) In addition to all other remedies provided by law for the enforcement of liens or for the recovery of warehouseman's charges, a warehouseman may sell by public auction, in the manner provided in this section, any goods upon which he has a lien for charges that have become due.

Notice of sale

(2) The warehouseman shall give written notice of his intention to sell,

(*a*) to the person liable as debtor for the charges for which the lien exists; and

(*b*) to the owner of the goods, including the person in whom the right of property therein is vested, where a financing statement in respect of a security interest in the goods is registered under the *Personal Property Security Act* at the date of deposit of the goods, and

(*c*) to the grantee of the goods under any bill of sale registered under the *Bills of Sale Act* at that date; and

(*d*) to any other person known by the warehouseman to have or claim an interest in the goods.

Form of notice

(3) The notice shall contain,

(*a*) a brief description of the goods; and

(*b*) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman, and the name of the person by whom they were deposited; and

(*c*) an itemized statement of the warehouseman's charges showing the sum due at the time of the notice; and

(*d*) a demand that the amount of the charges as stated in the notice and such further charges as may accrue shall be paid on or before a day mentioned, not less than twenty-one days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination according to the due course of mail if it is sent by mail; and

(*e*) a statement that unless the charges are paid within the time mentioned, the goods will be advertised for sale and sold by public auction at a time and place specified in the notice.

Advertisement of sale

(4) Where the charges are not paid on or before the day mentioned in the notice, an advertisment of the sale, describing the goods to be sold and stating the name of the person liable as debtor for the charges for which the lien exists and the time and place of the sale, shall be published at least once a week for two consecutive weeks in a newspaper published in Ontario and circulating in the locality where the sale is to be held, and the sale shall be held not less than fourteen days from the date of the first publication of the advertisement. R.S.O. 1970, c. 488, s. 4.

Substantial compliance with requirements

5. Where a notice of lien under section 3 or a notice of intention to sell under section 4 has been given, but such provisions have not been strictly complied with, if the court or a judge before whom any question respecting the notice is tried or inquired into considers that such provisions have been substantially complied with, or that it would be inequitable for the lien or sale to be void by reason of such non-compliance, no objection to the sufficiency of the notice shall in any such case be allowed to prevail so as to release or discharge the goods from the lien or vitiate the sale. R.S.O. 1970, c. 488, s. 5.

Application of proceeds of sale

6.—(1) The warehouseman shall satisfy his lien from the proceeds of the sale and shall pay over the surplus, if any, to the person entitled thereto, and the warehouseman shall when paying over the surplus deliver to the person to whom he pays it a statement of account showing how the amount has been computed.

When surplus to be paid into court

(2) If the surplus is not demanded by the person entitled thereto within ten days after the sale, or if there are different claimants or the rights thereto are uncertain, the warehouseman shall pay the surplus into the Supreme Court upon the order of a judge, and the order may be made *ex parte* upon such terms and conditions as to costs and otherwise as the judge may direct, and may provide to what fund or name the amount shall be credited.

Statement of account to be filed

(3) The warehouseman at the time of paying the amount into court shall file in court a copy of the statement of account showing how the amount has been computed. R.S.O. 1970, c. 488, s. 6.

Discharge of lien

7. (1) At any time before the goods are sold any person claiming an interest or right of possession in the goods may pay the warehouseman the amount necessary to satisfy his lien, including the expenses incurred in serving the notices, publishing the advertisement and preparing for the sale up to the time of the payment.

Disposition of goods

(2) The warehouseman shall deliver the goods to the person making the payment if he is the person entitled to the possession of the goods on payment of the warehouseman's charges thereon, otherwise the warehouseman shall retain possession of the goods according to the terms of the contract of deposit. R.S.O. 1970, c. 488, s. 7.

Notices how given

8. Where by this Act any notice in writing is required to be given, the notice shall be given by delivering it to the person to whom it is to be given, or by sending it by registered mail to his latest known address. R.S.O. 1970, c. 488, s. 8.

Contract not affected

9. Nothing in this Act shall be deemed to affect the terms of the contract between the owner or bailor and the warehouseman. R.S.O. 1970, c. 488, s. 9.

CHAPTER 513

Unclaimed Articles Act

Application of Act

1. This Act applies in the case of,

(*a*) any article of clothing or household goods,

(i) that is deposited with a person for cleaning, pressing, dyeing, glazing, washing or repairing, and

(ii) that, through no fault of the person with whom it is deposited, remains in his possession for a period of not less than six months,

in respect of which the agreed or reasonable charges for the services mentioned in subclause (i) are unpaid;

(*b*) any article of clothing or household goods,

(i) that is deposited with a person for storage, whether or not it is also deposited for cleaning, pressing, dyeing, glazing, washing or repairing, and

(ii) that, through no fault of the person with whom it is deposited, remains in his possession for a period of not less than two years,

in respect of which the agreed or reasonable charges for storage are unpaid for any period of not less than twelve months; and

(*c*) any article,

(i) that is deposited with a jeweller or watchmaker for repair or other treatment, and

(ii) that, through no fault of the person with whom it is deposited, remains in his possession for a period of not less than one year,

in respect of which the agreed or reasonable charges for the services rendered are unpaid. R.S.O. 1970, c. 471, s. 1.

Notice of intended disposal

2.—(1) Upon the expiration of the period mentioned in subclause 1 (*a*) (ii) or subclause 1 (*b*) (ii) or subclause 1 (*c*) (ii), as the case may be, the person with whom an article is deposited may cause a notice to be served by registered mail upon the owner of the article or the person who deposited the article addressed to him at his last known address stating,

(*a*) the amount of the agreed or reasonable charges in respect of the article; and

(*b*) that, if such charges are not paid within thirty days of the date of the service of the notice, the article will be disposed of.

Notice may cover more than one article

(2) Any notice under this section may be in respect of more than one article belonging to or deposited by the same person. R.S.O. 1970, c. 471, s. 2.

Where notice cannot be given

3. Where the whereabouts of the owner of and the person depositing an article cannot be ascertained and after all reasonable inquiries it is found that section 2 cannot be complied with, the person with whom an article is deposited may, without effecting service of notice as required by section 2, dispose thereof in the manner prescribed by section 4. R.S.O. 1970, c. 471, s. 3.

Disposal of articles

4.—(1) Upon the expiration of the thirty-day period mentioned in subsection 2 (1), the person with whom the article is deposited may dispose of it,

(*a*) by giving it to a charitable organization or by giving it to any organization in order that it may be used for charitable purposes; or

(*b*) in the case of an article,

(i) that has been declared by the owner or person depositing it to have a value of not more than $100, or

(ii) in the absence of such a declaration, having a reasonable market value of not more than $100,

by selling it.

Record of articles disposed of

(2) Every person who disposes of articles under this section shall maintain a record of the articles disposed of and the persons or organizations to whom they are disposed.

Application of proceeds

(3) Where an article is sold under subsection (1), the person selling it shall apply the proceeds of the sale in payment of his charges and shall upon application pay over the surplus to the person entitled thereto. R.S.O. 1970, c. 471, s. 4.

Proof of facts

5. Where an article has been disposed of under this Act, *prima facie* evidence of compliance with this Act or of the existence of any fact or the doing of any act may be given in any court by the affidavit of a person having actual knowledge thereof. R.S.O. 1970, c. 471, s. 5.

Relinquish claims for charges

6. Where an article has been disposed of under this Act, the person who disposed of it shall thereby relinquish all claims against the owner or person depositing it for unpaid charges for services upon or storage of the article. R.S.O. 1970, c. 471, s. 6.

Exceptions

7. This Act does not affect the right of any person to proceed in the manner prescribed by the *Warehousemen's Lien Act* or by the *Mechanics' Lien Act*. R.S.O. 1970, c. 471, s. 7.

R.S.O. 1980, cc. 529, 261

APPENDIX "B"

CHAPTER 83

Compulsory Automobile Insurance Act

2. (8) All costs and charges for the care and storage of the motor vehicle are a lien upon the motor vehicle that may be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*. Cost of storage R.S.O. 1980, c. 261

CHAPTER 198

Highway Traffic Act

147. (13) A constable or an officer appointed for the carrying out of the provisions of this Act, upon discovery of any vehicle parked or standing in contravention of subsection (10) or of a municipal by-law, may cause it to be moved or taken to and placed or stored in a suitable place and all costs and charges for removing, care and storage thereof, if any, are a lien upon the vehicle, which may be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*. R.S.O. 1970, c. 202, s. 116 (10-13). Powers of constable to remove vehicle R.S.O. 1980, c. 261

s. 147 (13), amended

Subsection 147 (13) of the said Act is amended by striking out "constable" in the first line and inserting in lieu thereof "police officer, police cadet, municipal law enforcement officer".

199. (5) All costs and charges for the care and storage of a motor vehicle detained under subsection (4) are a lien upon the motor vehicle, which may be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*. Care and storage charges R.S.O. 1980, c. 261

192. **Costs and charges for care and storage**

(4) All costs and charges for the care and storage of the motor vehicle are a lien upon the motor vehicle, which may be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*. R.S.O. 1980, c. 261

Abandoned vehicle

(6) A constable or an officer appointed for carrying out the provisions of this Act, upon the discovery of a motor vehicle apparently abandoned on or near a highway or of a motor vehicle without proper number plates, shall take the motor vehicle into his custody and may cause it to be taken to and stored in a suitable place and all costs and charges for removal, care or storage thereof are a lien upon the motor vehicle, which may be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*. R.S.O. 1970, c. 202, s. 151(3,6)